Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84
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VERIZON'S OPPOSITION TO PUBLIC KNOWLEDGE'S PETITION FOR RECONSIDERATION AND MOTION TO HOLD IN ABEYANCE

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VERIZON'S[1] OPPOSITION TO PUBLIC KNOWLEDGE'S PETITION FOR RECONSIDERATION AND MOTION TO HOLD IN ABEYANCE

The Commission should deny Public Knowledge's request to reconsider and stay[2] portions of the *Second Report and Order*.[3] The *Second Report and Order* continued the Commission's important efforts to streamline the process for discontinuing outdated services and to eliminate unnecessary and burdensome requirements. Those efforts included adoption of the alternative options test, which facilitates the transition to IP networks while assuring customers "a smooth transition to a voice replacement service that provides capabilities comparable to legacy TDM-based voice services and, often, numerous additional advanced capabilities."[4]

Public Knowledge seeks reconsideration of parts of the *Second Report and Order*, but offers no basis for the Commission to reverse any of its decisions. Instead, Public Knowledge's

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[1] The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

[2] Public Knowledge Petition for Reconsideration and Motion to Hold in Abeyance, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 (Aug. 8, 2018) ("Petition").

[3] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, WC Docket No. 17-84, FCC 18-74 (June 8, 2018) ("*Second Report and Order*").

[4] *Id.* ¶ 34.

request inaccurately describes the Commission's decisions and reasoning, and mischaracterizes the views of the National Telecommunications and Information Administration (NTIA).[5] Contrary to Public Knowledge's assertions, NTIA — like Verizon — supports the Commission's streamlining efforts.

Public Knowledge also seeks what it calls abeyance, but is actually a stay of the *Second Report and Order*, by asking the Commission to keep its decision from becoming effective. That request is procedurally defective because the Commission's rules prohibit combining a motion for stay with any other requested relief.[6] It is also substantively deficient because Public Knowledge has not shown a stay is justified.[7]

DISCUSSION

I. NTIA's Letter Noting Particular Challenges for Some Federal Agencies Provides No Basis for Reconsideration

Contrary to Public Knowledge's assertions, NTIA generally supports the Commission's approach. In a July 19, 2018, letter, NTIA expressed strong support for the Commission's decisions in the *Second Report and Order*, noting that it has "consistently supported network modernization because it will both significantly reduce carriers' operating and maintenance costs

[5] Letter from David J. Redl, Administrator, National Telecommunications and Information Administration, to Ajit Pai, Chairman, FCC, WC Docket No. 17-84 (July 19, 2018) ("NTIA Letter").

[6] *See* 47 C.F.R. § 1.44(e) ("Any request to stay the effectiveness of any decision or order of the Commission shall be filed as a separate pleading. Any such request which is not filed as a separate pleading will not be considered by the Commission.").

[7] The Petition may also be untimely. Petitions for reconsideration are due 30 days after publication in the Federal Register; for the *Second Report and Order*, the deadline was August 8, 2018. *See* 47 C.F.R. § 1.429(d). Although the Petition is dated August 8, 2018, ECFS shows it as received on August 9, 2018. Public Knowledge filed a motion for clarification on August 10, 2018, in which it asserts that the Petition was filed timely, but to which it did not attach the ECFS confirmation of filing or any other evidence, such as a declaration or affidavit from the filer.

and enable carriers to expand and enhance the services they can offer subscribers."[8] Specifically, NTIA praised the "Commission's decision to extend the streamlined processing rules . . . for legacy voice and data services at speeds less than 1.544 Mbps to carrier applications to discontinue data services at speeds below 25/3 Mbps."[9] NTIA then expressed "confiden[ce] that the Commission will continue to recognize and address the specific needs of federal government users during the IP transition."[10]

Contrary to the Petition's assertions, the NTIA letter does not say that the *Second Report and Order* "is *likely* to have an adverse effect on the missions of various federal agencies."[11] Instead, NTIA recognized that federal agencies may face unique challenges under some circumstances and that the Commission can look after any legitimate interests of federal agencies through the Commission's case-by-case authority over discontinuance applications, which can ensure that federal agencies suffer no disruption in their operations.[12] NTIA was also "encouraged by the Commission's statement that it expects carriers to continue" to collaborate with government customers.[13] Indeed, as we have explained, Verizon and other providers have substantial experience working with government customers to find a suitable alternative before a service is discontinued.[14] Thus, while NTIA noted some potential issues that federal agencies in remote

[8] NTIA Letter at 1.

[9] *Id.*

[10] *Id.* at 3.

[11] Petition at 3 (emphasis added).

[12] *See* NTIA Letter at 2.

[13] *Id.*

[14] Verizon Reply Comments, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, at 32 (July 17, 2017).

areas may face during the IP transition,[15] it expressed confidence that the Commission has the tools necessary to avoid any adverse impact on federal operations.

Public Knowledge asserts that the letter critiques both the Commission's reliance on marketplace incentives and the alternative options test.[16] Not so. With respect to marketplace incentives, NTIA agreed that the federal government "generally is well-positioned to protect its interests through large-scale service contracts with carriers."[17] NTIA recognized that in some limited circumstances, "negotiation alone *may* not produce the contractual provisions that adequately serve federal users' needs,"[18] but expressed confidence that the Commission's case-by-case authority will protect federal interests in these instances.[19] And NTIA's letter does not even mention, much less criticize, the alternative options test.[20] Nothing in the NTIA letter supports Public Knowledge's request for reconsideration of the *Second Report and Order*.

II. Public Knowledge's Complaints About Broadband Maps Provide No Basis for Reconsideration

To satisfy the alternative options test, a provider discontinuing a legacy voice service as part of a "technology transition"[21] must show both "that (1) it provides a stand-alone interconnected VoIP service throughout the affected service area, and (2) at least one other stand-alone facilities-based voice service is available from another provider throughout the affected

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[15] *See* NTIA Letter at 2.

[16] *See* Petition at 4.

[17] NTIA Letter at 2.

[18] *Id.* (emphasis added).

[19] *See id.* at 3.

[20] Public Knowledge's assertion (at 4) that "NTIA noted that any replacement test without quantifiable performance standards has inherent shortcomings in its ability to ensure adequate replacement services" has no basis in any statement actually contained in the letter.

[21] *See* 47 C.F.R. § 63.60(i) (defining "technology transition").

service area."[22] Public Knowledge "presum[es]" without evidence that the Commission's broadband maps would "guide its analysis" on the second prong and asserts that the maps "have been demonstrated to be woefully inaccurate."[23]

Nothing in the *Second Report and Order* suggests that the broadband maps have anything to do with satisfying the second prong of the alternative options test. The Commission did not mention those maps anywhere in the order, much less declare them to provide guidance on where "stand-alone facilities-based voice service is available" from a provider other than the discontinuing provider. Instead, the Commission placed on the provider seeking to discontinue service the burden of showing that both prongs of the alternative options test are satisfied.[24] If a provider were to rely on the broadband maps to meet its burden, parties will have an opportunity to object to the extent they disagree with the maps or any other portion of the provider's application. The Commission need not address that hypothetical possibility now, and it provides no basis for reconsideration of the Commission's approach.[25]

III. The Commission Should Not Reconsider the Alternative Options Test, Which Strikes the Correct Balance Between Provider Flexibility and Consumer Protection

The alternative options test adopted in the *Second Report and Order* provides a second way — in addition to the adequate replacement test — for providers to obtain streamlined processing of applications to discontinue legacy voice services as part of a technology transition.

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[22] *Second Report and Order* ¶ 30 (footnotes omitted).

[23] Petition at 4.

[24] *See Second Report and Order* ¶ 30.

[25] Although Public Knowledge criticizes "broadband maps" generally, the letters it cites addressed only the Commission's map of eligible areas for the Mobility Fund Phase II auction for universal service support. *See* Petition at 5 nn.14-15. These letters do not assert that other broadband maps are inaccurate.

While the adequate replacement test — which has only been effective for two months[26] and hasn't itself been tested — requires that a single replacement service meet various criteria,[27] the alternative options test requires that the applicant itself offer standalone interconnected VoIP and that at least one other provider offer standalone facilities-based voice service. As the Commission explained, the two-prongs of the alternative options test provide the same kind of consumer protection as the adequate replacement test. That is because where the alternative options test is satisfied, consumers will have the choice of an interconnected VoIP offering that meets the Commission's "service quality and underlying network infrastructure, and disabilities access and 911 access requirements," as well as at least one additional "facilities-based alternative" that will compete with the discontinuing provider's interconnected VoIP service.[28]

In complaining about perceived deficiencies in the alternative options test, Public Knowledge ignores the Commission's explanation for why the "testing and other regulatory compliance obligations" that it found necessary for the *single* service that can satisfy the adequate replacement test are not necessary under the alternative options test, where customers will have the option of two or more services.[29] As the Commission explained, the "two parts of the

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[26] *See* Technology Transitions; Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers, 83 Fed. Reg. 36,467 (July 30, 2018).

[27] *See Second Report and Order* ¶ 29 n.91. That replacement service must satisfy a three-prong test: (i) substantially similar levels of network infrastructure and service quality as the retiring service; (ii) compliance with existing federal and/or industry standards (such as those governing 911, network security, and disability access; and (iii) interoperability and compatibility with certain important applications and functionalities. *Id.* (citing *Technology Transitions et al.*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283, ¶ 65 (2016)).

[28] *Second Report and Order* ¶ 34 (footnotes omitted).

[29] *Id*.

alternative options test . . . address . . . concerns about potentially inadequate . . . replacement services."[30]

In short, Public Knowledge's accusation[31] that the alternative options test accounts only for provider interests and not the public interest is baseless. The Commission had a sound basis for concluding that, "under either test, customers will be assured a smooth transition to a voice replacement service that provides capabilities comparable to legacy TDM-based voice services and, often, numerous additional advanced capabilities."[32]

IV. Public Knowledge's Complaints About the 10-Day Comment Period for Applications To Grandfather or To Discontinue Certain Services Are Misplaced

The 10-day comment period the *Second Report and Order* adopted for certain grandfathering and discontinuance applications should be maintained.[33] In its 2017 *First Report and Order*, the Commission established a streamlined process for applications to grandfather legacy voice and data services below 1.544 Mbps and to discontinue previously-grandfathered data services below 1.544 Mbps: 10 days for public comment and 25 days before applications are automatically granted.[34] The Commission found that a streamlined timeline for grandfathering these services would not harm consumers because "[r]elatively few customers remain on legacy services, and because existing customers will be grandfathered under this section of our rules, they are unlikely to be harmed by these new processes."[35] The Commission also adopted 10-day

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[30] *Id.*

[31] *See* Petition at 7-8.

[32] *Second Report and Order* ¶ 34.

[33] *See* Petition at 9; *Second Report and Order* ¶¶ 7-14.

[34] *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11,128, ¶¶ 84-107 (2017) ("*First Report and Order*").

[35] *Id.* ¶ 88.

comment and 31-day automatic grant periods for applications to discontinue legacy *data* services (below 1.544 Mbps) that have been grandfathered for at least 180 days.[36] The Commission explained that a "10-day comment period for these applications will provide customers with ample notice of the impending discontinuance of their service, as the initial grandfathering of the service is a clear signal to these customers that such service is likely to be discontinued in the future."[37]

Building on the *First Report and Order*, the *Second Report and Order* extended these timeframes to incrementally broader categories of services. Thus, the Commission extended the 10-day comment and 25-day auto-grant periods to applications seeking to grandfather legacy voice service[38] or seeking to grandfather data services below 25/3 Mbps so long as the provider offers a replacement data service of at least 25/3 Mbps.[39] The Commission also extended the 10-day comment and 31-day auto-grant periods to applications seeking to discontinue previously grandfathered *data* services (not voice) with speeds below 25/3 Mbps.[40] The Commission found that such streamlining "will spur the ongoing technology transition to next-generation IP-based services and promote competition in the market for higher-speed replacement services."[41]

Now, Public Knowledge complains about "the condensed ten day time frame the *Order* established for consumers have [*sic*] to file comments in opposition to discontinuance."[42] But its

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[36] *Id.* ¶¶ 93-94.

[37] *Id.* ¶ 96.

[38] *Second Report and Order* ¶ 39.

[39] *Id.* ¶¶ 7-14.

[40] *Id.* ¶ 7.

[41] *Id.* ¶ 8.

[42] Petition at 9 (citing *Second Report and Order* ¶ 7).

argument improperly conflates copper retirement with discontinuance.[43] Public Knowledge claims that the "Commission has already . . . stopped requiring carriers to inform end-users of the discontinuance of traditional copper-wire services; now it is doing further disservice to these consumers by only giving them a brief ten day window to comment and appeal (if they are fortunate enough to even receive a notice of discontinuance.)"[44] This argument confuses copper retirement with service discontinuance. While the *First Report and Order* eliminated the retail notification requirement for retiring copper networks,[45] that action did not affect the Commission's requirement that customers receive notice of discontinuance applications for services subject to section 214.[46] Likewise, the *Second Report and Order*'s streamlined 10-day period for commenting on certain discontinuance applications is distinct from copper retirement. Thus, Public Knowledge's petition to reconsider the 10-day comment period for certain discontinuances must be rejected because that period is irrelevant to the purported harms to the copper retirement process that Public Knowledge seeks to prevent.

Public Knowledge continues conflating copper retirement with discontinuance when it argues that "[t]he Commission should reinstate the 180-day notice period for customers of discontinued services."[47] But the default public notice period for discontinuance applications has been 31 days for non-dominant providers and 60 days for dominant providers for nearly twenty

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[43] *See* Petition at 9-11; *see also First Report and Order* ¶¶ 24, 43 (rejecting arguments that "confuse the copper retirement notice process . . . with the discontinuance process").

[44] Petition at 9.

[45] *See First Report and Order* ¶ 45 ("Today we revise the copper retirement rules to eliminate the requirement of direct notice to retail customers adopted in 2015.").

[46] *See* 47 U.S.C. § 214; 47 C.F.R. § 63.71 (detailing procedures for "domestic carriers . . . to discontinue, reduce or impair service").

[47] *See* Petition at 11.

years,[48] and certain types of applications are eligible for shorter timelines. It appears that the 180-day period that Public Knowledge wants reinstated is the *copper retirement* waiting period that the *First Report and Order* reduced from 180 to 90 days.[49] But the time for seeking Commission reconsideration of the *First Report and Order* has long expired. The *Second Report and Order* does not modify the copper retirement waiting period and therefore Public Knowledge has no basis for raising that issue in its Petition.

V. Public Knowledge's Vague Complaints About the Commission's Reliance on Marketplace Incentives Do Not Warrant Reconsideration

Public Knowledge asks the Commission to reconsider its assumptions about marketplace incentives but fails to identify any specific decision the Commission made based on those assumptions that requires reconsideration. Standing alone, the Commission's reliance upon marketplace incentives in its analysis is not a "final action" that is subject to reconsideration.[50] To the extent Public Knowledge is simply repeating its earlier complaints about the alternative options test and the 10-day comment period for certain discontinuances, those complaints fail for the reasons set out above.[51]

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[48] *See Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*; *Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Report & Order, 14 FCC Rcd 11,364, ¶ 29 (1999) ("We will revise 47 C.F.R. § 63.71 to state that a domestic non-dominant carrier's discontinuance application will be granted automatically after 31 days and a domestic dominant carrier's discontinuance application granted automatically after 60 days, unless we notify the carrier during the interim period that its application will not be automatically granted."); 47 C.F.R. § 63.71(c) (requiring that a section 214 discontinuance application be filed "on or after the date on which notice has been given to all affected customers").

[49] *See First Report and Order* ¶ 61 (reducing "the generally applicable 180-day waiting period for copper retirements to a 90-day waiting period").

[50] *See* 47 C.F.R. § 1.429(a).

[51] The Petition's stale claims regarding Fire Island and Hurricane Sandy, to which Verizon has responded multiple times, do not warrant reconsideration here. *See*, *e.g.*, Letter from Maggie McCready, Verizon, to Julie A. Veach, Chief of Wireline Competition Bureau, FCC, GN Docket

In any event, there is nothing wrong with the Commission taking into account providers' marketplace incentives. Courts have repeatedly upheld Commission decisions that rely on its predictive judgments about such incentives.[52] The Commission "may rationally choose which evidence to believe among conflicting evidence in its proceedings, especially when predicting what will happen in the markets under its jurisdiction."[53] And the D.C. Circuit has refused to "second-guess" the Commission's predictions "about the development of new broadband technologies and about the incentives for increased deployment (and, in turn, increased competition)" because such predictions are "well within the agency's area of expertise."[54] Thus, the *Second Report and Order*'s analysis of marketplace incentives provides no basis for reconsideration.

VI. The Motion to Hold in Abeyance Is a Procedurally Improper Stay Motion (and Is Meritless in Any Event)

Although Public Knowledge captions its motion as one to hold the *Second Report and Order* in abeyance while its petition for judicial review of parts of the 2017 *First Report and Order* is pending, what it actually seeks is a *stay* of the *Second Report and Order*. An abeyance

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No. 13-5, at 6 (June 2, 2014); Letter from Maggie McCready, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-150 *et al.*, at 1-2 (Feb. 3, 2014).

[52] *See*, *e.g.*, *Citizens Telecommunications Co. of Minnesota, LLC v. FCC*, 901 F.3d 991, 1006-10 (8th Cir. 2018).

[53] *Id*. at 1011.

[54] *EarthLink, Inc. v. FCC*, 462 F.3d 1, 12 (D.C. Cir. 2006). Other examples of deference to the Commission's economic judgments abound. *See*, *e.g.*, *In re Core Commc'ns, Inc.*, 455 F.3d 267 (D.C. Cir. 2006) ("[The Commission's] predictive judgments about areas that are within the agency's field of discretion and expertise are entitled to *particularly deferential* review, as long as they are reasonable.") (quoting *Milk Industry Found. v. Glickman*, 132 F.3d 1467, 1478 (D.C. Cir. 1998)); *Globalstar, Inc. v. FCC*, 564 F.3d 476, 487 (D.C. Cir. 2009) (upholding FCC action when the Commission "reasonably exercised its predictive judgment that the spectrum reassignment plan was well suited to the still developing MSS market and to the changing needs of the participants in that market").

keeps a pending, not-yet-decided matter open, while a stay prevents (or undoes) the effectiveness of a decision already taken.[55] Public Knowledge seeks the latter: it wants "to avoid the implementation of" the *Second Report and Order*.[56]

Under the Commission's rules, a "request to stay the effectiveness of" a Commission decision must be "filed as a separate pleading."[57] Where, as here, a party combines a request for a stay with a request for additional relief, the stay request "will not be considered by the Commission."[58] The Commission has previously enforced that rule by dismissing a stay request where, as here, a party filed a single petition "request[ing] that the Commission stay those rules for which it had requested reconsideration."[59] The Commission should dismiss Public Knowledge's stay request for the same reason.[60]

But if the Commission reaches the merits, it should find that Public Knowledge has not come close to satisfying the four-factor test for granting a stay. Public Knowledge has the burden to "make an affirmative showing"[61] on each of: "1) whether the petitioner has made a strong

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[55] *Compare Leased Commercial Access Modernization of Media Regulation Initiative*, Further Notice of Proposed Rulemaking, MB Docket Nos. 07-42 & 17-105, FCC 18-80, ¶ 5 (June 8, 2018) (describing stay of order from completed proceeding), *with id*. ¶ 6 (describing abeyance of ongoing judicial review).

[56] Petition at 14.

[57] 47 C.F.R. § 1.44(e).

[58] *Id.*

[59] *Policies and Rules Concerning Interstate 900 Telecommunications Services*, Order on Reconsideration, 8 FCC Rcd 2342, ¶ 3 n.4 (1993).

[60] This rule exists for good reason. Oppositions to petitions for reconsideration are due within 15 days after the date of public notice of the petition's filing. *See* 47 C.F.R. § 1.429(f). By contrast, "[o]ppositions to a request for stay of any order . . . shall be filed within 7 days after the request is filed." *Id.* § 1.45(d). Thus, the requirement that stay motions be filed separately ensures that interested parties have clear notice of when their oppositions are due so that they do not miss their opportunity to oppose a stay motion.

[61] *Review of Part 15 of Commission's Rules*, Order, 17 FCC Rcd 17,003, ¶ 6 (2002).

showing that [it] is likely to prevail on the merits of its appeal; 2) whether the petitioner has shown it will be irreparably injured without relief; 3) whether the issuance of a stay would not cause substantial harm to other parties interested in the proceeding; and 4) whether the stay is in the public interest."[62] Public Knowledge has not done so.

Public Knowledge notes the currently pending appeal for judicial review of the *First Report and Order*, but does not show that it is likely to succeed on its challenges or that the *Second Report and Order* would have to be altered if Public Knowledge were to prevail on its pending appeal. Public Knowledge also does not address any of the other three prongs. In fact, a stay would harm providers and the public interest. The *Second Report and Order* removed regulatory barriers that impede the transition from legacy networks and services to modern networks and services — an "important transition that benefits the American public" by allowing it to "receive the benefits of [next-generation] networks."[63] Delaying those benefits while the Ninth Circuit reviews the *First Report and Order* — which is likely to take at least a year if not more — would unnecessarily burden providers and delay the closing of the digital divide.

[62] *Id*.

[63] *Second Report and Order* ¶¶ 1-2.

Respectfully submitted,

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